

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

Darian Joseph Bartos,

Plaintiff,

vs.

BKY No. 10-60981

ADV No. 10-6036

Kelly Elizabeth Kloeppner,

Defendant.

BEFORE THE HONORABLE DENNIS D. O'BRIEN

United States Bankruptcy Judge

* * *

TRANSCRIPT OF PROCEEDINGS

4-26-11

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Proceedings recorded by electronic sound recording,
transcript prepared by transcription service.

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A P P E A R A N C E S

MR. GREGORY S. WALZ, Attorney at
Law, Suite 206, 1411 West St. Germain Street,
St. Cloud, Minnesota 56301, appeared on behalf
of Plaintiff.

MR. SAM V. CALVERT, Attorney at Law,
Suite 107, 1011 Second Street North, St.
Cloud, Minnesota 56303, appeared on behalf
of Defendant.

1 P R O C E E D I N G S

2

3 THE COURT: Good afternoon.

4 Be seated, please. Before the court this

5 afternoon is the bankruptcy of Gary and

6 Joseph Bartos versus Kelly Elizabeth

7 Kloeppner, Adversary proceeding No. 10-6036

8 on cross motions for summary judgment.

9 Would counsel identify themselves for

10 the record, please.

11 MR. CALVERT: Sam Calvert,

12 St. Cloud, Minnesota, for the defendant.

13 MR. WALZ: Gregory Walz

14 appearing on behalf of Darian Bartos,

15 plaintiff.

16 THE COURT: Mr. Walz, you may

17 proceed.

18 MR. WALZ: Should I step up,

19 Your Honor?

20 THE COURT: Do you have a

21 motion -- you have a cross motion for summary

22 judgment, don't you?

23 MR. WALZ: Yes, I do.

24 THE COURT: Yes. You may

25 proceed.

1 MR. WALZ: I think this is a
2 complicated case. There are a number of
3 courts with different views on this. And I
4 think some of the problems or the
5 incompleteness or misguidedness of what the
6 courts have done in the past is, in part,
7 from a number of things.

8 First of all, I think one of the
9 things that the Court needs to recognize in
10 this case is that 2005 bankruptcy court
11 provisions applicable here were modified.
12 Some of these provisions are cases
13 involved -- cases prior to that date involve
14 different aspects. I think A5 and A15 were
15 modified so that A5 says domestic support
16 obligations. A15 was modified substantially
17 and I think was expanded.

18 So what the Court has now is basically
19 that any obligation, whether it's support,
20 alimony, maintenance or property, is now not
21 dischargeable in bankruptcy court. And I
22 think that's the reading that we need to take
23 today.

24 It used to be that some debts or
25 obligations between domestic partners were

1 dischargeable, specifically property
2 obligations. In the cases that -- if you
3 look at them carefully, I think there's one
4 case, the Calhoun case, had this balancing
5 test which looked at different factors in
6 order to determine whether something was in
7 the nature of support or in the nature of
8 maintenance. And the reason for that
9 particular test, and I would submit to the
10 Court today the cases that we saw says it's
11 basically obsolete now, is that people were
12 drafting decrees at that point to make it
13 look like support so that the property
14 provisions were not dischargeable. So part
15 of the problem in the past has been
16 eliminated specifically because of the
17 statutory amendments.

18 I think Kasich, the case that's cited
19 in my brief, perhaps gives an inkling of what
20 is happening. I'm sorry, I -- it indicates
21 that some of the problems that were in the
22 past may not be applicable today. There's a
23 footnote 5, I believe, in that case that
24 addresses that particular issue.

25 But going to the facts of the case I

1 think one of the things that the Court can
2 look at here, and the Baker case talks
3 about it, there's some allegations here about
4 a lot of factual things that -- we didn't
5 bring a fraud -- we tried to bring a fraud
6 argument in the district court at the state
7 level. We couldn't do it because the court
8 didn't buy it. There's some facts about
9 fraud and facts about other things. I think
10 if you look at the Baker case, one of the
11 last things it says in there is that the
12 court should not help someone who comes into
13 court with unclean hands. I think all of
14 these facts show that she comes into court
15 with unclean hands, and the Court should not
16 intervene in this case in part because of
17 that.

18 Now, looking at the statutory
19 amendments, I think the policies are
20 important to keep an overview of. I think
21 Kline, Shine v. Shine, and Miller indicate a
22 number of things that because these are
23 familial obligations, they should be
24 liberally construed in favor of the creditor
25 here.

1 And there's other cases like Norbut
2 which says that federal courts should give
3 deference to state court for domestic issues,
4 issues of federalism. They're not going to
5 get involved in these kinds of things. So
6 when you're looking at this, I would submit
7 to the Court from a statutory construction
8 standpoint it should be looked at liberally.
9 The state court should give deference to
10 the -- the federal court should give
11 deference to the state court.

12 In fact, there's one case that we
13 cited that specifically says if a state court
14 labels something support, it's that we don't
15 even go farther. We don't look into the
16 Calhoun criteria at all.

17 So getting into the analysis of this
18 particular case, I think, first of all, this
19 is a paternity case that's not a marriage.
20 The other party, the defendant has made a big
21 issue about the fact that there's marriage or
22 no marriage. I would submit to the Court
23 that that's not an issue.

24 I think the Kemp case specifically
25 makes it clear that if you -- despite the

1 fact that it's spouse or whatever it is, it's
2 not interpreted that way and I think it would
3 violate equal protection of other issues.
4 And I go on to say, too, is when all that --
5 if with same sex marriages, with common law
6 marriages, with other kinds of things around
7 the country, if the bankruptcy courts do not
8 interpret this universally without looking
9 for gender or what kinds of obligation, I
10 think there would be significant problems.
11 There would be problems between state to
12 state, whether a state could go -- let's say
13 somebody gets married in same sex in, let's
14 say, wherever, New York. I don't know what
15 state it is. And they come to Minnesota that
16 doesn't recognize marriage. They could
17 discharge any obligation if they had adopted
18 something like that.

19 So I think that creates significant
20 problems in and of itself. Whether they're
21 married or not I think is irrelevant, and the
22 Court is going to have to interpret it as it
23 doesn't matter. The issue here for
24 non-dischargeability is irrelevant.

25 The other issue is whether or not

1 there continues to be the child-father
2 relationship. And there's some dispute about
3 that. And my argument is this: Under
4 518A.26, subdivision 5, it defines who a
5 child is for child support purposes in the
6 Minnesota statute. For child support
7 purposes it's somebody that's either under 18
8 or somebody who's under 20 who's still going
9 to secondary school.

10 My argument is this. If this court
11 allows this obligation to be discharged, I
12 would submit that every person who's a
13 non-payer who has arrearages is going to come
14 into court and file bankruptcy after that
15 child is no longer a child pursuant to the
16 definitions in 518A.26. There will no longer
17 be this need base thing at that point because
18 the child doesn't need. The child isn't
19 under age.

20 So I think for purposes of this case
21 and you have uniformity across while there's
22 a obligation, underlying obligation or
23 whether it is in arrears where the child is
24 of age, we have to recognize that this is
25 non-dischargeable in this particular case.

1 THE COURT: Let me ask a
2 question. My understanding is that your
3 client, the plaintiff, either thought he was
4 or was alleged to be the father of this child
5 and that he began either voluntarily or under
6 a court order to pay child support, that
7 after a period of time, he was able to prove
8 through DNA evidence that he is not the
9 father. And so he then embarked on a mission
10 to get back from the mother of this child the
11 money that he paid for child support, right?

12 MR. WALZ: That's correct.

13 THE COURT: And he finally
14 got a judgment in state court for a monetary
15 amount against the defendant, right?

16 MR. WALZ: That's correct.

17 THE COURT: How in the world
18 is a monetary judgment under those
19 circumstances child support under 523A5 or 15?
20 I am totaling missing the connection there.

21 MR. WALZ: I don't think it
22 necessarily has to be child support per se.
23 I think this --

24 THE COURT: What does it have
25 to be?

1 MR. WALZ: I think it can be
2 either property, or as long as they're
3 domestic partners, they had a domestic
4 relationship, I think it goes -- A15 applies
5 as well. It doesn't matter whether
6 they're -- and I don't think you can change
7 the character of it either. Once it was
8 that, how are you going to change it now?

9 THE COURT: Well, what does
10 the state court judgment call it?

11 MR. WALZ: Calls it child
12 support. It was paid, reimbursed for child
13 support.

14 THE COURT: So he has a
15 judgment to be reimbursed for child support
16 that he paid.

17 MR. WALZ: Right. That's the
18 label --

19 THE COURT: How under 523A5
20 or 15 does that become non-dischargeable
21 child support? It's not support that's paid
22 for a child and it's not spousal maintenance.

23 MR. WALZ: Well, I think the
24 court looked at that in one of the cases that
25 I cited.

1 THE COURT: Which court did
2 that?

3 MR. WALZ: Baker.

4 THE COURT: What jurisdiction
5 is that?

6 MR. WALZ: Baker is from
7 Ohio. And what they did there, I think, is
8 they looked at it in terms of whether there
9 was an obligation at the time. They couldn't
10 relabel it. They just said as long as
11 there's a legal duty to pay under a court
12 order or in connection with, therefore, it
13 was non-dischargeable. And the reason for
14 that was in part A5 and A15 -- A15 used to
15 be -- involved a weighing of needs depending
16 on how much the ability to pay. And this
17 court, Baker, looked at that and said because
18 A5 did not involve a weighing, they said that
19 any need is irrelevant. You don't have to
20 show need for a child. That's why I bring up
21 this argument about after a child reaches
22 majority, there is no need for a child under
23 the state court definition. It's merely an
24 obligation to --

25 THE COURT: But A5 and 15 are

1 meant to assist people who are entitled
2 either directly or indirectly to collect
3 child support. He's not trying to collect
4 child support. He's trying to recover
5 essentially a money judgment for damages for
6 support that he already paid for someone
7 else.

8 MR. WALZ: But it was
9 incurred in connection with a domestic
10 relationship. And I think that's in
11 connection with language that's specific.
12 And from my understanding at least is right
13 now, property judgments are not dischargeable
14 either between parties in a domestic
15 relationship. That's the difference, I
16 believe, now.

17 The other thing is, you know, I think
18 I cited a Minnesota state supreme court case.
19 Angell says you cannot modify or change the
20 character of something of what something was
21 once into something else. I think that
22 falls --

23 THE COURT: But the
24 definition of child support for purposes of
25 523A5 and 15 is federal law, isn't it?

1 MR. WALZ: Well, I think
2 there's a question what standard is used.
3 You need to look to state court to define it
4 and you cannot -- you have to give deference
5 to state court definitions --

6 THE COURT: Isn't the law in
7 this jurisdiction as well as the entire
8 Eighth Circuit quite clear that the federal
9 court determines whether an obligation is in
10 the nature of child support or otherwise
11 regardless of what the language in the state
12 court documents say?

13 MR. WALZ: I don't believe
14 so, Your Honor. I think it says in there
15 first you have to give deference to what the
16 state court says, and only if the state court
17 doesn't say anything, then you look at the
18 test.

19 THE COURT: Are you saying --

20 MR. WALZ: And the change --

21 THE COURT: Are you saying
22 that the law requires the federal court to
23 find an obligation of child support if it is
24 recited as such in the state court --

25 MR. WALZ: That's one of the

1 cases did that, in fact, and didn't even look
2 through beyond that. So that's one of the
3 cited cases.

4 THE COURT: Okay.

5 MR. WALZ: So -- but I think
6 the Norbert -- Norbut, N-O-R-B-U-T, and the
7 Baker case give a pretty good exposition how
8 the case law is different from what it --
9 statutes are different how it's applied
10 differently as well.

11 Again, I think what domestic support
12 obligation is, domestic doesn't imply any
13 partner, any kind of gender or anything like
14 that. It doesn't matter whether it's same
15 sex.

16 THE COURT: Well, what does
17 property involve? What's the property that's
18 involved here?

19 MR. WALZ: Well, if you --
20 what I'm saying is --

21 THE COURT: He paid money.

22 MR. WALZ: Pardon?

23 THE COURT: He paid money
24 that was --

25 MR. WALZ: Right.

1 THE COURT: -- since spent.

2 What's the property?

3 MR. WALZ: Well, why isn't
4 that property? If the child support is
5 not --

6 THE COURT: What is it?

7 Where is the property? Where is it?

8 MR. WALZ: It's only money.

9 THE COURT: But where is the
10 property?

11 MR. WALZ: Well, if you
12 define something as either a support
13 obligation or some kind of property
14 obligation, I believe A15 takes into
15 consideration anything in connection with
16 state court, judgment, decree, or whatever
17 else and says it's basically
18 non-dischargeable. The new definition is
19 expansive. And I think even Ann Montgomery
20 in her case, that recent case, strictly dealt
21 with A5. It doesn't have anything to do with
22 A15. And then again they only classified
23 things as property because of the
24 designation -- I think it was equalizer, if
25 I'm correct. So they said in that case --

1 THE COURT: So you consider
2 this -- you consider the state court's recent
3 judgment for the recovery of these funds
4 paid, you consider that to be an award of
5 property by the state court in the context of
6 a dissolution of marriage.

7 Is that right?

8 MR. WALZ: Well, I don't know
9 whether you consider -- it originally was
10 support. And even if you don't consider it
11 support or change it so it gets modified into
12 something else, it still is non-dischargeable
13 because it's part of a domestic obligation.

14 THE COURT: Okay.

15 MR. WALZ: Under A15.

16 THE COURT: Mr. Calvert?

17 MR. CALVERT: Good afternoon,
18 Your Honor. I'll try to be brief in view of
19 the time pressures here.

20 I will first call the Court's
21 attention to the fact I brought a second
22 motion to redact one sentence out of
23 Mr. Walz's memorandum of law, the one
24 beginning, Later plaintiff did a DNA test,
25 and ending in the words, DNA testing. I

1 respectfully submit that that sentence adds
2 nothing whatsoever to the case. If you
3 published it in a newspaper, it probably
4 would be libel per se. We're not, you know,
5 I mean, if the Court wants to read the cases
6 and for whatever in-camera sort of
7 information it wants, I have no objection to
8 that, but I do object to it being part of the
9 public record.

10 In response to that Mr. Walz filed
11 another stack of documents including, I
12 regret to say, the child's full name, I would
13 respectfully ask the Court to simply redact
14 that entire filing from the court -- from the
15 publically accessible court file.

16 Your Honor, the -- you're right that
17 the Eighth Circuit, I believe, is clear that
18 the federal court makes a determination
19 whether this would or wouldn't be child
20 support or alimony or spousal maintenance.
21 These parties were never married. Mr. Bartos
22 spent a great deal of time and probably a
23 great deal of money in state court proving
24 that he was not the father. He should not be
25 heard to come into court now and claim that

1 he is the father for some mysterious purpose
2 of getting back the money that he maybe
3 shouldn't have paid to start with.

4 All of the cases cited by counsel are
5 pre-BAP sepa cases. As Mr. Walz
6 acknowledged, BAP sepa changed the definition
7 by setting out a new definition in Section
8 101. I submit that the cases he cites are
9 simply not any longer good law.

10 I did, rather to my surprise, find two
11 or three cases on similar facts post-BAP
12 sepa, the Van Hook case, the Indiana case,
13 and I respectfully submit that those cases
14 should control. These parties were never
15 married. They did not have a child together.
16 There was no divorce. And the -- I don't
17 know what a domestic relationship is. I
18 don't think we have those in Minnesota. I'm
19 pretty sure we don't have same-sex marriage
20 in Minnesota. I'm pretty sure we haven't had
21 common law marriage in Minnesota since
22 something like 1941. So I'm not at all sure
23 where those arguments raised by counsel are
24 supposed to lead you, but I respectfully
25 submit what you have is sort of a common

1 ordinary judgment in which the defendant was
2 ordered to pay the plaintiff some money. It
3 arose out of unusual circumstances. But the
4 fact that it rose out of unusual
5 circumstances does not somehow make it into
6 child support. It simply does not meet the
7 definitional tests required to be a domestic
8 support obligation.

9 THE COURT: I agree. The
10 motion for redaction is granted and the
11 motion for summary judgment by the defendant
12 is granted. Anything else?

13 MR. WALZ: Nothing.

14 THE COURT: Okay. For those
15 of you who are here for a 2:00 trial, we're
16 already in the middle of an 11:00 trial, and
17 so you're just going to have to go out in the
18 hall and try to resolve the matter or
19 otherwise have fun until we get through this
20 other thing.

21
22 * * *

1 STATE OF MINNESOTA)
) ss.
2 COUNTY OF WASHINGTON)

3

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9 That the proceedings were recorded
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16 That I am not related to any of the
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s:/ Lisa M.Thorsgaard